

**DECISION**



18525 *maus*  
*plm*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-203390

DATE: June 17, 1981

MATTER OF: Barclay & Hobbs, Inc.

**DIGEST:**

Protest filed more than two months after protester learned of contract award is untimely since GAO Bid Protest Procedures require protest to be filed within 10 working days after basis of protest was known or should have been known.

Barclay & Hobbs, Inc., protests the award of a contract to SEAHAB Corporation by the Department of the Navy under request for proposals (RFP) No. N00140-81-R-0123. For the reasons set forth below, the protest is dismissed as untimely.

Barclay & Hobbs states that it was notified of the contract award to SEAHAB by letter dated March 5, 1981 and received several days later. On March 13, 1981 it initiated a Freedom of Information Act (FOIA) request in order to ascertain whether certain suspected improprieties had arisen during the award process. Barclay & Hobbs contacted the contracting office on two subsequent occasions in this regard, but never received any final response either granting or denying its FOIA request.

On May 11, 1981, Barclay & Hobbs states that it lodged "a more formalized and specific protest" with the contracting office. On May 19, 1981, Barclay & Hobbs filed the instant protest with this Office alleging that SEAHAB is not a dealer or manufacturer of the supplies offered, as required by the Walsh-Healey Act; that Barclay & Hobbs' proposal was lower in cost than SEAHAB's, and that Barclay & Hobbs was improperly excluded from further negotiations.

To be timely, Barclay & Hobbs must have filed its protest with the Navy and/or this Office within 10 working days after it knew or should have known of the basis for

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protest. 4 C.F.R. § 20.2(a) and (b)(2) (1980). While Barclay & Hobbs apparently believes that its FOIA request tolled that requirement in this case, we disagree.

Barclay & Hobbs characterizes its May 11 letter to the Navy as a more formalized and specific protest; however, it is apparent from the record that this was the first time Barclay & Hobbs had in fact lodged any objection to the contract award. Its March 13 FOIA request simply asks that copies of all proposals and the final awarded contract be released. It is equally apparent that Barclay & Hobbs knew of its bases of protest upon learning of contract award since it admittedly received no new information after that time. However, Barclay & Hobbs did not protest this matter until more than 2 months later.

It is not uncommon for a firm upon learning of award to a competitor to lodge with this Office whatever protest basis it may have and still pursue a request with the contracting agency under FOIA. For purposes of the timeliness rules, we require only that a protester articulate its reasons for objecting to an agency action and in appropriate cases, this Office may defer action on a protest while a FOIA request is pursued. Century Industries, Inc., B-198801, June 18, 1980, 80-1 CPD 429. However, that decision is for this Office to make and we have consistently required that protests be filed promptly after the basis for protest becomes known. Davey Compressor Company, B-195425, November 14, 1979, 79-2 CPD 351. Once it had grounds for protest, Barclay & Hobbs could not toll the timeliness requirement because of a perceived need to analyze the situation or obtain additional information. Advanced Marine Enterprises, Inc., B-196252.2, February 7, 1980, 80-1 CPD 106.

The protest is dismissed.

*Harry R. Van Cleve*

Harry R. Van Cleve  
Acting General Counsel